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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

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No. 737

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PANHANDLE EASTERN PIPE LINE COMPANY, a Corporation,
*Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

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## BRIEF FOR INTERVENORS, AMERICAN LOUISIANA PIPE LINE COMPANY, MICHIGAN WISCONSIN PIPELINE COMPANY AND MICHIGAN CONSOLIDATED GAS COMPANY, IN OPPOSITION *

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* All of the other intervenors joined in the motions to dismiss in the court below. These intervenors are: the Michigan Public Service Commission; the City of Detroit; the County of Wayne, Michigan; the City of Milwaukee; Texas Gas Transmission Corporation; Milwaukee Gas Light Company; Wisconsin Public Service Corporation; Madison Gas & Electric Company; Wisconsin Power & Light Company; Wisconsin Fuel & Light Company; Fort Madison Gas Company; St. Joseph Light & Power Company; City Gas Company (Antigo); Wisconsin Rapids Gas and Electric Company; Wisconsin Rapids "City Gas" Company, and Merrill Gas Company.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Third Circuit dismissing the petition for review is reported at 219 F. (2d) 729. The opinion and order of the Federal Power Commission (Pet. App. 16-40) have not yet been reported.[1]

## QUESTION PRESENTED

Whether the court below properly held on the facts of this case that the Petitioner, an interstate pipeline company, is not "aggrieved" by an order of the Commission authorizing a new pipeline to supply the *additional* natural gas required by 16 distributing companies, where

(1) Petitioner admittedly did not propose and admittedly does not desire to supply any of such additional gas.

(2) Petitioner is a limited and partial supplier of only one of the distributing companies and is seeking authority to abandon 30 percent of its deliveries to that company.

(3) Petitioner did not allege that it will suffer any economic or other injury by reason of the Commission's action.

## STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, 15 U.S.C. 717, *et seq.*, are set forth in the Appendix to this brief, *infra*, pp. 17-18.

## STATEMENT

The Petitioner, Panhandle Eastern Pipe Line Company ("Panhandle"), seeks review of a decision of the Court of Appeals for the Third Circuit dismissing Panhandle's petition to review and set aside an opinion and order of the Federal Power Commission. By that opinion and order (Pet. App. 16-40), the Commission issued a certificate of public convenience and necessity under Section 7(c)

[1] Appendix references are to the separate appendix volume accompanying the petition for certiorari.

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of the Natural Gas Act to American Louisiana Pipe Line Company ("American Louisiana") authorizing American Louisiana to construct a natural gas pipeline from gas fields in Louisiana to provide the additional natural gas required by 16 distributing companies serving numerous communities in Michigan, Wisconsin, Iowa and Missouri. At the same time, the Commission authorized Texas Gas Transmission Company ("Texas Gas") to deliver an agreed upon volume of gas to American Louisiana near Slaughters, Kentucky.[2]

The Court of Appeals concluded, as had the Commission, that Panhandle is not "aggrieved" by the Commission's action and thus had no standing under Section 19(b) of the Act to review its opinion and order. The facts, briefly, are these:

Panhandle, the Petitioner herein, owns and operates an interstate pipeline system which supplies natural gas to 49 utility companies in the Midwest, including Michigan Consolidated Gas Company ("Michigan Consolidated"). Michigan Consolidated distributes natural gas to the consuming public in Detroit, Ann Arbor, Grand Rapids, Muskegon, and other important communities in the State of Michigan. With the exception of Michigan Consolidated, Panhandle does not serve nor desire to serve any of the distributing companies to be supplied with gas from American Louisiana.

For many years, Panhandle has delivered a maximum of 125,000 Mcf of natural gas per day to Michigan Consolidated at Detroit and a maximum of 2,000 Mcf per day at Ann Arbor. Some ten years ago these volumes became seriously inadequate to meet the increasing requirements of the public served by Michigan Consolidated, but Panhandle refused to increase its deliveries to Michigan Consolidated. Accordingly, American Natural Gas Company ("American Natural"), the parent company of Michigan

[2] The Texas Gas aspect of the Commission's opinion and order is not discussed in the Petition (see Pet. 8, fn. 2).

Consolidated, organized Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin"), which built and now operates an interstate pipeline system supplying natural gas to Michigan Consolidated in addition to that delivered by Panhandle.

Michigan Wisconsin also provides the entire gas supply of 15 other distributing companies serving numerous communities in Missouri, Iowa, Wisconsin and Michigan. *In the Matter of Michigan Wisconsin Pipe Line Company*, 5 F.P.C. 953; 6 F.P.C. 1.[3]

Thereafter, in May, 1950, Panhandle applied for and received authority to increase substantially the capacity of its pipeline. Michigan Consolidated, faced with ever increasing consumer demands for gas, sought to obtain a share of this expanded capacity. Panhandle not only refused this request but applied to the Commission for authority to abandon 30 percent of its existing service to Michigan Consolidated at Detroit—a reduction of deliveries from 125,000 Mcf to 87,500 Mcf per day which would have created an immediate and critical gas shortage in the area.

The Commission denied Michigan Consolidated any portion of Panhandle's increased capacity and also denied Panhandle's application to partially abandon its service to Michigan Consolidated. Upon Panhandle's appeal, the Court of Appeals for the Third Circuit set aside and remanded the Commission's order denying Panhandle's abandonment application because of the relationship of that application to the broader question of the proper allocation of Panhandle's pipeline capacity among its various customers, which was also being remanded by the Court.

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[3] Panhandle attempted, without success, to review and set aside the Federal Power Commission's action authorizing the Michigan Wisconsin project, *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission* (C.A.-D.C.), 169 F. (2d) 881, *cert. den.* 335 U.S. 854, and also attempted, without success, to review and set aside the action of the Securities and Exchange Commission in approving the financing of the project. *Panhandle Eastern Pipe Line Co.* v. *Securities and Exchange Commission* (C.A. 8), 170 F. (2d) 453.

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*Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 204 F. (2d) 675, 925.[4] At the same time, the Court affirmed the Commission's action in denying Michigan Consolidated any portion of Panhandle's increased capacity. *Michigan Consolidated Gas Company* v. *Federal Power Commission*, 203 F. (2d) 895.

In sum, Michigan Consolidated has been denied any portion of Panhandle's increased capacity and is faced with that company's pending application for partial abandonment of its present deliveries.

Panhandle is now actively prosecuting its abandonment application before the Commission and is contending that the certification of the American Louisiana project permits such abandonment.

Although Michigan Wisconsin's capacity has been expanded to the full extent permitted by its presently available gas supply[5] and although Panhandle under the Commission's order has continued its deliveries in the existing volumes, the growing demands for more natural gas have resulted in a serious gas shortage in the communities served by Michigan Consolidated and Michigan Wisconsin. As a result, the Federal Power Commission and the State Commissions of Michigan and Wisconsin found it necessary to restrict the growth of the gas sales of the companies within their respective jurisdictions by imposing "stringent restrictions" upon the connection of new or additional gas loads (Pet. App. 18).

In order to meet what the Commission here found to be a "crying demand" for additional gas in the communities served by Michigan Consolidated and Michigan Wisconsin (Pet. App. 29), American Natural, their parent company, organized American Louisiana to transport gas from the

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[4] Further hearings were subsequently held by the Commission in the abandonment and allocation proceedings, which are now awaiting decision. 19 Fed. Reg. 1071-73.

[5] *In the Matter of Michigan Wisconsin Pipe Line Company*, 9 F.P.C. 152, 156.

prolific gas fields of Southern Louisiana to points of connection with the existing companies.

The construction of this new pipeline will make possible the elimination of stringent restrictions upon gas sales for both homes and industries which have been in effect for approximately five years and make new supplies of natural gas available in nearly 200 cities and towns, including many important industrial areas where gas is essential in the manufacture of goods vital to the economy of the country and necessary for the national defense.

Despite the fact that the gas to be delivered by American Louisiana will be in addition to and will not displace any of Panhandle's existing deliveries to Michigan Consolidated, and despite the fact that Panhandle was and is vigorously prosecuting before the Commission its application to partially abandon its existing service to Michigan Consolidated, Panhandle intervened in opposition to American Natural's application for a certificate of public convenience and necessity.[6]

After extended hearings and oral arguments, in which Panhandle fully participated, the Commission issued its opinion and order granting a certificate to American Louisiana. In its opinion, the Commission pointed out that Panhandle had not submitted any proposal to meet the additional needs of Michigan Consolidated and of the other customers of Michigan Wisconsin and specifically found that Panhandle would not be "aggrieved" by the issuance of a certificate to American Louisiana (Pet. App. 30).

Upon the filing of Panhandle's Petition for Review in the court below, the Commission promptly filed a motion to dismiss on the ground that Panhandle was not "aggrieved"

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[6] The fact that Panhandle was permitted to intervene has no significance since the Commission's Rules of Practice and Procedure (18 C.F.R. Sec. 1.1(f)(13)) provide that: "Admission as an intervenor *shall not be construed* as recognition by the Commission that such intervenor might be aggrieved by any order of the Commission in such proceeding." (Italics are supplied throughout this brief unless otherwise indicated.)

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as required by Section 19(b) of the Natural Gas Act. Motions to dismiss the petition upon the same ground were filed by American Louisiana, Michigan Wisconsin, Michigan Consolidated and Texas Gas. All of the other intervenors in the court below joined in these motions to dismiss.

Following briefs and oral argument, the court below unanimously sustained the motions to dismiss (Pet. App. 56-61), and thereafter denied Panhandle's application for rehearing (Pet. App. 61-72; 74).

## ARGUMENT

Panhandle is in the anomalous position of opposing the construction of a new natural gas pipeline to serve Detroit and other communities in Michigan, Wisconsin, Iowa and Missouri despite the fact that it admittedly "does not wish to serve" the demand for additional gas in those communities (Pet. 19) and is attempting to *reduce* its deliveries to Michigan Consolidated at Detroit by 30 percent (Pet. 10, fn. 3). The Court of Appeals for the Third Circuit held that under these circumstances Panhandle was not "aggrieved" by the Commission's order authorizing the new pipeline. The petition for certiorari alleges, in an unrestrained fashion, that the Court of Appeals flouted well established principles governing the right to review administrative action. As we shall point out, the contrary is the fact.

One obvious primary purpose of Congress in limiting judicial review of Commission orders to persons "aggrieved" was to prevent the unjustifiable delay of projects of public service by litigations carried on by mere obstructionists. This case presents a clear example of the absence of a legal grievance in Petitioner and the need for a prompt denial of a baseless judicial review. Recognition of this situation undoubtedly moved the Court of Appeals promptly to dismiss the petition for review and makes it our duty to urge most earnestly that this Court by similar

timely action carry out the wise intent of the legal limitation of review to persons "aggrieved."

It should be noted at the outset that in Panhandle's Petition for Review "no factual allegations are given which support the contention that it is aggrieved," as the court below pointed out (Pet. App. 57). That court was unusually well acquainted with the background of the matters here involved since Panhandle's petition to review the Commission's instant order was the fourth recent case in that court involving Panhandle's deliveries to markets in Michigan and other states. As previously noted, that court, in *Michigan Consolidated Gas Co.* v. *Federal Power Commission*, 203 F. (2d) 895, had upheld an order of the Commission approving Panhandle's refusal of Michigan Consolidated's request for a portion of Panhandle's increased pipeline capacity. In *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 204 F. (2d) 675, the court had held that the Commission had no authority to compel an enlargement of Panhandle's facilities to serve its customers even when additional capacity was necessary in order to remove discrimination. And in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 204 F. (2d) 925, the court had remanded the Commission's order denying Panhandle's application to reduce its service to Michigan Consolidated at Detroit from 125,000 Mcf per day to 87,500 Mcf per day.

Thus, the Court of Appeals was fully familiar with Michigan Consolidated's long and fruitless efforts to obtain more gas from Panhandle, with Panhandle's fixed resolution to reduce if possible its supply of gas to Michigan Consolidated, and with the very real and urgent need for more gas in Detroit and the other communities. Panhandle's unsupported assertion that it is "aggrieved" by the order authorizing construction of a pipeline to provide the gas that Panhandle refused to supply was, very properly, rejected by the court.

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**(1) Panhandle Is Not a Competitor for the Additional Market Requirements to be Supplied by American Louisiana**

Under the provisions of Section 19(b) of the Act, Panhandle was not entitled to a review of the Commission's order unless its petition contained factual allegations from which the court below could determine that Panhandle is "aggrieved" by the order.[7] Panhandle, an experienced litigant, could not and did not meet this requirement.

In its Petition for Review in the court below, Panhandle's theory of aggrievement was simply that its *present* sales to Michigan Consolidated at Detroit made it a "competitor of American Louisiana, Michigan Consolidated, Michigan Wisconsin and Texas Gas within the meaning of Section 15(a) of the Natural Gas Act," and that, as such, it had standing to seek review (Pet. App. 3). Panhandle contended, in other words, that since it presently supplies a limited portion of Michigan Consolidated's requirements any new supplier of additional gas to that company is automatically a "competitor" whose authorization by the Federal Power Commission is sufficient to result in "aggrievement" to Panhandle.

The difficulty with this position is that it ignores the fact that, while some of the gas to be delivered by American Louisiana will go to Michigan Consolidated at Detroit, the demand which will be supplied by such gas is not that which is now supplied in part by Panhandle but an entirely new demand consisting of the *unfilled* needs and *increased* requirements of consumers in that area. And with respect to this demand, Panhandle openly admits that it has no desire to supply gas (Pet. 19). Quite the contrary, it is attempting to curtail the gas it now delivers to Michigan Consolidated at Detroit by nearly one third.

The Court of Appeals recognized the anomaly inherent

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[7] See, e.g., *Interstate Electric, Inc.* v. *Federal Power Commission*, 164 F. (2d) 485 (C.A. 9); *National Broadcasting Co.* v. *Federal Communications Commission*, 132 F. (2d) 545 (C.A.-D.C.), affirmed 319 U.S. 238.

in Panhandle's claim of aggrievement and stated (Pet. App. 59):

> "Whatever may be the outcome of Panhandle's effort to obtain authority for reduction of its supply of gas to Michigan Consolidated, the gas to be delivered to that concern by American Louisiana is not in displacement of any part of its Panhandle allotment but over and above it in order to provide for the *increased* requirements of the Michigan Consolidated territory.
>
> "Panhandle makes no offer of facts in its petition for review that would even tend to support any allegation that it is a competitor of American Louisiana, Michigan Consolidated, Michigan Wisconsin and Texas Gas for the *unsupplied* market."

Thus, even taking Panhandle's contention at face value, the court below concluded that Panhandle was not "aggrieved," stating (Pet. App. 58):

> "Whether or not it [Panhandle] is a competitor of these companies *for the present restricted markets* in the states of Michigan and Wisconsin is beside the point. * * * It has evinced no interest in trying to take care of the substantial *increased needs* which are the basis for the certificates of convenience and necessity issued by the Commission."

Apart from decisions which are tacitly recognized as beside the point (Pet. 16),[8] the cases relied upon by Panhandle in its petition for certiorari all reflect situations in which facts were alleged showing that the granting of the certificate would result in economic injury to a competitor. Thus, in *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, this Court held that where the issuance of a license to a new radio

[8] Panhandle is not and does not claim to be a consumer or a representative of the consuming public. Accordingly, *Chapman* v. *Federal Power Commission*, 345 U.S. 153; *Associated Industries* v. *Ickes*, 134 F. (2d) 694 (C.A. 2) and *Reade* v. *Ewing*, 205 F. (2d) 630 (C.A. 2) are irrelevant.

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station would result in economic injury to an existing licensee, the latter had standing to appeal even though such economic injury was not a separate element that the agency had to consider.

Similarly, the three certificate cases under the Natural Gas Act upon which Panhandle also relies (Pet. 11-13) involved the displacement of existing sales which the petitioner desired to continue making. Thus, in *National Coal Association* v. *Federal Power Commission*, 191 F. (2d) 462 (C.A.-D.C.) certain coal operators, the United Mine Workers, and coal-hauling railroads demonstrated in their petition for review that authorization of the natural gas pipeline would result in loss of a market then being supplied with coal, to their great economic injury. *Arkansas Louisiana Gas Company* v. *Federal Power Commission*, 113 F. (2d) 281 (C.A. 5), involved a review by a company serving industrial gas consumers of an order authorizing another company to build a pipeline into the area and take over service to such consumers. And again, in *Cia Mexicana de Gas* v. *Federal Power Commission*, 167 F. (2d) 804 (C.A. 5), a public utility company serving the general public in a particular territory was held entitled to review an order of the Commission authorizing a pipeline company to invade that territory.

In its Petition for Review in this case, on the contrary, Panhandle did not attempt to make any factual showing that it was aggrieved by an order permitting another pipeline to serve a demand Panhandle has no desire to supply. The meager, conclusory averments of Panhandle's Petition for Review bear no resemblance to those referred to by the court in the *National Coal Association case*, for example, where the precise economic effect of the Commission's order was spelled out in detail in the petition for review. (See 191 F. (2d) at 466.)[9]

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[9] Panhandle's Petition for Review set forth in two places (Pet. App. 6, 7) the "naked assertion" of aggrievement but, as the lower court held (Pet. App. 57) and as Panhandle recognizes (Pet. 15, fn. 4), this "is not enough."

If Panhandle had desired to serve the *additional* market requirements which American Louisiana has been authorized to supply, it had ample opportunity to file a competitive application which it failed to do.[10] But when Panhandle admitted openly that it has no desire to serve the additional market requirements (Pet. 19) and made no claim of economic or other injury, the fact that it provides a portion of the *existing* gas supply of one of the communities clearly does not establish its aggrievement.[11]

The court below was fully aware of the decisions relied upon by Panhandle but quite properly held that they either had no application on the facts of this case or supported the conclusion reached by the court. There is thus no conflict between the decision of the Court of Appeals in this case and the decisions of this Court or those of any other Court of Appeals.

**(2) Panhandle's Belated and Unsupported Claims Concerning Its Existing Deliveries at Detroit Are Without Merit**

In apparent recognition that it was not "aggrieved" by an order authorizing service of the additional market requirements it "does not wish to serve" (Pet. 19), Pan-

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[10] See *Northeastern Gas Transmission Company* v. *Federal Power Commission*, 195 F. (2d) 872 (C.A. 3), *cert. denied*, 344 U.S. 818; *Kentucky Natural Gas Corporation* v. *Federal Power Commission*, 159 F. (2d) 215 (C.A. 6).

[11] Panhandle's belated attempt to show (Pet. 17) that it is a competitor of Michigan Consolidated because of Panhandle's desire to make direct sales to industries in the Detroit area (which was not mentioned nor supported by any factual allegations in the Petition for Review) represents mere obfuscation. As this Court made clear in condemning Panhandle's attempt to take over "the cream of the volume business without regard to the local public convenience and necessity," Panhandle cannot make any direct sales to industries in the Detroit area without first obtaining the authorization of the Michigan Commission. *Panhandle Eastern Pipe Line Company* v. *Michigan Public Service Commission*, 341 U.S. 329, 334. Since Panhandle has not obtained any such authorization, its present contentions in this regard are purely "speculative." *United States Cane Sugar Refiners Association* v. *McNutt*, 138 F. (2d) 116, 121 (C.A. 2).

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handle advanced several contentions which were neither mentioned nor factually supported in its Petition for Review. Pointing to the fact that American Louisiana and Michigan Consolidated are affiliates, Panhandle belatedly asserted that it does not now have an enforceable contract with Michigan Consolidated and advanced the conjecture that Michigan Consolidated might therefore "attempt to cut off Panhandle as a supplier" (Pet. App. 59). Because of this purely speculative possibility Panhandle then contended that it was entitled to maintain this review in order to protect its existing deliveries to Michigan Consolidated (Pet. 23).

These arguments have no merit, as we shall point out, and it is not surprising that they were but mere afterthoughts. The Petition for Review did not contain even the semblance of an allegation that Panhandle feared the displacement of its present sales to Michigan Consolidated.[12] The court below therefore was under no obligation to consider such contention.[13] Nevertheless, the court disposed of it in a footnote as follows (Pet. App. 59):

> "Without any factual allegation in the petition, Panhandle contends that if the proposed pipeline were constructed Michigan Consolidated might eventually purchase all its supply from American Louisiana. There is nothing before us giving the slightest support to the suggestion that Michigan Consolidated is not bound to accept its quota of gas from Panhandle; certainly no implication that it could refuse delivery

[12] Panhandle now emphasizes the fact that in its attack on the merits of the Commission's order, it assigned as error "the absence of substantial evidence" of an adequate market for the American Louisiana gas (Pet. App. 9, 12). Nowhere in its Petition for Review, however, did Panhandle relate this claim to any contention that its present sales to Michigan Consolidated would thereby be affected. Nor can any such contention be supported as we shall point out (*infra*, pp. 14-15).

[13] *Interstate Electric, Inc.* v. *Federal Power Commission*, 164 F. (2d) 485, 486, (C.A. 9); *National Broadcasting Company* v. *Federal Communications Commission*, 132 F. (2d) 545 (C.A.-D.C.) affirmed 319 U.S. 238.

from Panhandle without the authority of the Commission. Beyond that the case is barren of proof that Michigan Consolidated will attempt to cut off Panhandle as a supplier."

Moreover, Panhandle's tardy and gratuitous assertion that "Michigan Consolidated will cut off its purchases" from Panhandle "just as soon as American Louisiana can be placed in operation" (Pet. 24) overlooks the fact that the Federal Power Commission, whatever its direct control over Michigan Consolidated,[14] has complete control over American Louisiana's operations (as well as those of Michigan Wisconsin), including the volumes to be delivered to Michigan Consolidated and the terms and conditions under which deliveries shall be made.[15] Indeed, in its order authorizing the American Louisiana project, the Commission, in accordance with its usual practice, specifically reserved for further hearings and subsequent determination the "disposition" of the volumes of gas to be delivered and the sales of gas to be made by American Louisiana (Pet. App. 21, 32-33). Unless and until such further proceedings have been held, there is no possibility of American Louisiana displacing any of Panhandle's sales to Michigan Consolidated. The threat that Panhandle professes to fear is therefore both premature and "speculative." *United States Cane Sugar Refiners Ass'n.* v. *McNutt*, 138 F. (2d) 116, 121 (C.A. 2). Should the situation that Panhandle envisages ever arise, Panhandle

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[14] The Commission's authority over "city gate" service is in no way dependent upon whether the purchaser is a "natural-gas company" under the Act. Accordingly, there is no significance to the fact that Michigan Consolidated, an intrastate distributing company, was exempted from the Natural Gas Act by the Section 1(c) amendment of March 27, 1954 (68 Stat. 36).

[15] *Montana-Dakota Utilities Company* v. *Northwestern Public Service Company*, 341 U.S. 246, 251; *Public Utilities Commission of Ohio* v. *United Fuel Gas Company*, 317 U.S. 456, 466-468; *Michigan Consolidated Gas Company* v. *Panhandle Eastern Pipe Line Company*, 173 F. (2d) 784, 789 (C.A. 6).

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can obtain full protection of its rights from the Commission, which has ample authority to deal with such matters.

Finally, while it is true that Panhandle, over the strenuous objection of Michigan Consolidated, undertook to cancel its contract with Michigan Consolidated as of December 31, 1951, the notice of cancellation did not become effective because the contract was on file with the Commission as a rate schedule and because Section 7(b) of the Act prohibits any abandonment of service without the prior approval of the Commission.[16] Thereafter, the Commission prescribed the form of tariff for the Panhandle system and, contrary to the implication in Panhandle's petition (Pet. 22), the Commission continued Panhandle's contract with Michigan Consolidated in effect as an operative service agreement under that tariff.[17] In accordance with the provisions of this contract, which is still in force as a service agreement, Michigan Consolidated is obligated to purchase and Panhandle is obligated to supply Michigan Consolidated's "requirements of natural gas at Detroit up to a maximum volume of 125,000 Mcf per day."[18]

In short, Panhandle's present contention that it fears displacement by American Louisiana of its existing sales to Michigan Consolidated (despite the fact that Panhandle is now vigorously prosecuting its application to abandon 30 percent of those sales) was not presented to the court below by Panhandle's Petition for Review but was purely an afterthought, lately conceived to bolster an untenable position. It is without merit legally and without support factually.

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[16] This appears from the previously mentioned prior decisions of the court below in *Michigan Consolidated Gas Company* v. *Federal Power Commission*, 203 F. (2d) 895, 899 (C.A. 3); *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission*, 204 F. (2d) 925 (C.A. 3).

[17] See *Michigan Consolidated Gas Company* v. *Federal Power Commission*, 203 F. (2d) 895, at 898 (C.A. 3).

[18] *Id.* at 899.

## CONCLUSION

The decision below turned on the particular facts of this case and is clearly correct. There is no conflict of decisions and no need for further review. In view of the public interest involved in this matter, it is therefore respectfully submitted that the petition for a writ of certiorari should be denied as promptly as possible.

Respectfully submitted,

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# APPENDIX

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## APPENDIX

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, 15 U. S. C. 717 *et seq.* are as follows:

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Sec. 19(a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

Sec. 19(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission

as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended.

Sec. 19(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

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